

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,
Plaintiff,

vs.

(1) Amina Farah Ali and
(2) Hawo Mohamed Hassan,
Defendants.

)
)
) File No. CR-10-187
) (MJD/FLN)
)

) Minneapolis, Minnesota
) October 3, 2011
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BEFORE THE HONORABLE MICHAEL J. DAVIS and a Jury
UNITED STATES DISTRICT COURT JUDGE

(EXCERPTS FROM TRIAL REGARDING CONTEMPT)

Proceedings recorded by mechanical stenography;
transcript produced by computer.

APPEARANCES

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Interpreters:

Osman Abdulle
Osman Omar

1 (9:10 a.m.)

2 **P R O C E E D I N G S**

3 **IN OPEN COURT**

4 **(JURY NOT PRESENT)**

5 THE COURT: Mr. Scott --

6 MR. SCOTT: Yes, Your Honor.

7 THE COURT: -- I issued an order requiring all
8 individuals in this court to rise. Your client did not
9 rise. Did you inform her of my order?

10 MR. SCOTT: I did, Your Honor.

11 THE COURT: All right. She will be taken into
12 custody. Her status of release is revoked. And we will
13 adjourn until you go down and talk to her to see if she will
14 rise. If she does not, then we will set up procedures for
15 her to be outside of the courtroom while the trial is going
16 on.

17 MR. SCOTT: Your Honor, I would object to that. I
18 don't believe that -- one, I understand the Court issued the
19 order.

20 Two is my client is not in a position where she is
21 obstructing the proceedings.

22 Three is this Court has the power to order almost
23 anything, but there is not written uniform rules of decorum
24 that require standing in the federal courts, as there is in
25 the state court.

1 And four, I believe my client has a religious
2 reason of her interpretation of the Quran that means she
3 should not rise for persons when she does not rise for the
4 prophet.

5 THE COURT: All right. Anything for the
6 Government?

7 MR. PAULSEN: Not at this time, Your Honor.

8 THE COURT: All right. She will be taken into
9 custody.

10 MR. KELLY: Your Honor?

11 (Recess taken at 9:15 a.m.)

12 * * * * *

13 (10:20 a.m.)

14 **IN OPEN COURT**

15 **(JURY NOT PRESENT)**

16 THE COURT: Mr. Scott, will you have your client
17 come forward to the podium. Let's swear the interpreter in,
18 please.

19 THE CLERK: Please raise your right hands.

20 (Interpreters sworn.)

21 THE COURT: Mr. Scott and Ms. Ali, I filed an
22 order on September 30, 2011 ordering all parties and counsel
23 to follow the rules of decorum set forth by this Court,
24 which includes rising when the court is called to order.
25 Any party failing to comply with the rules of decorum will

1 be sanctioned by the Court.

2 Now, it should be clear for the record that it
3 came to my attention that Defendant Ali had not been rising.
4 I don't look at the defendants or audience and see who is
5 rising or not. That's the job of my court security officers
6 and other staff to alert the Court of individuals that are
7 not comporting with the rules of decorum.

8 So it's clear to you, ma'am, it's not -- I am not
9 asking you to rise for me. It is the decorum of this court
10 and the court system that you are rising for of the United
11 States of America.

12 You do not have a First Amendment right to not
13 rise. That has been the case law. So it's clear, the Court
14 will impose that and I have a number of ways to impose my
15 rules and the rules of the court. And one of the rules has
16 already been effected, I will revoke your status of release.

17 Secondly, if you do not wish to rise when the jury
18 comes into the courtroom or when court is called into
19 session, I will again ask you whether or not you understand
20 my rules. If you say that you do and that you are not going
21 to follow them, then I have a number of options.

22 And the option that I will take in this case is
23 that you will not be in the courtroom. It is disruptive and
24 it will cause great harm to the administration of justice if
25 you do not follow the very basic rules.

1 The record should reflect that I have been a judge
2 for 28 years and I have had many religions and many
3 different individuals, from Freemen, to Posse Comitatus, to
4 other groups, that have felt that the court system was
5 illegitimate.

6 Whenever they have arrived in my courtroom, they
7 have been ordered to rise out of respect for the system of
8 justice that we have in the United States. And if they
9 could not do that they were removed from my courtroom,
10 whether or not they were the defendants or spectators in the
11 courtroom. That includes taking their hats off and
12 respecting the decorum of the court.

13 I ask nothing more of you than I have asked
14 individuals that have appeared in front of me for the last
15 28 years as a judge and have been the rules of decorum for
16 the United States court system for over a hundred years.

17 So my question to you is: Will you follow the
18 Court's ruling that you rise when court is called into
19 session, when court is called into session with the jury,
20 and when court is recessed?

21 DEFENDANT ALI: Okay. I have never intended not
22 to follow the rules of the court. What I have tried to
23 observe was my religious belief. My religious belief
24 instructs me to follow certain things. I have never
25 intended to offend anyone. I have been in court in the

1 past. I have never had an issue like this, never. This is
2 the first time that I am seeing this problem.

3 THE COURT: Well, I don't know where you've been
4 in court, whether or not it has occurred in the past. I
5 issued an order last week. Your attorney has gone over that
6 order with you. I just explained to you the rules and the
7 concepts of the administration of justice in the United
8 States of America. And as a participant in this trial and
9 any person that is observing this trial will have to follow
10 the rules of decorum.

11 You may have an interpretation of your religion
12 that says that you cannot rise, but I can tell you that the
13 law of the United States is clear that the freedom of
14 religion does not keep you from rising and following the
15 decorum of court.

16 And so understanding what the law is, and it's not
17 my personal law, but it's the law of the country, are you
18 willing to follow the Court's order that you rise when court
19 is called into session, when court is called for the jury,
20 and when court is called for recess -- I can't make it any
21 simpler than that -- and to follow the rules of decorum that
22 all individuals in this courtroom have to follow?

23 DEFENDANT ALI: I have said that I am doing this
24 for religious reasons. If you are claiming power, that's
25 entirely up to you. I'm not going to stand up to anyone

1 except Allah.

2 THE COURT: All right. We will have -- certainly
3 I will give you time to think about it, because we're going
4 to start jury selection. If you do not stand up during jury
5 selection and when we open court, we will continue on with
6 the initial jury instructions and then after we recess from
7 the jury instructions you will be removed from the court.

8 Again, we'll give you an instruction what the
9 Court's rules are and understanding what the rules of our
10 country are dealing with the freedom of religion. Whether
11 or not you're Baptist or Methodist or Catholic or Mormon or
12 Hindu or Buddhist or Muslim, there are rules of decorum.
13 And it goes to the concept, the majesty of the judicial
14 system in the United States, not this individual, but to the
15 court system.

16 I have told you and Mr. Scott, I'm assuming, has
17 informed you that I control the rules of the decorum in this
18 court. My understanding is that you may need some time to
19 think about it. I hope that you will rise when the jury
20 appears, but that's your choice. If you do not, we will go
21 through the jury selection and I will give you another
22 instruction. And if you will not follow that instruction,
23 you will not be in this courtroom. We will have electronics
24 set up so you can hear what is going on in the courtroom.

25 In any event, because of your behavior in this

1 courtroom, I have revoked your release and you will be in
2 custody for the rest of the time.

3 Mr. Scott?

4 MR. SCOTT: Your Honor --

5 THE COURT: I need the translation.

6 DEFENDANT ALI: Okay. When I came to this country
7 I was told that people practiced freedom of religion in this
8 country. If I am not allowed to do so, you can kick me out
9 of this country. That's not a problem.

10 MR. SCOTT: Your Honor, we object. As my client
11 has said, as I said at the beginning, my client has a
12 reasoned belief -- she is a Muslim -- she has a reasoned
13 belief based upon her study of the Quran and the Hadith. In
14 the Hadith Muhammad, the prophet, said when people stood
15 before him that you should not stand. You overhonor me, I
16 think, is the English translation. My client believes that
17 that means that she is not to stand to authorities other
18 than God. She cannot stand even for the prophet.

19 She does have a Sixth Amendment -- excuse me -- a
20 First Amendment right to practice her religion. We disagree
21 with the Court's conclusion, that the failure to stand is
22 not justified in this case, and we believe that she has a
23 First Amendment right to do that.

24 More importantly, Your Honor, what the Court has
25 proposed as a sanction is to deprive her of her Sixth

1 Amendment right to confront her accusers when she will be
2 removed from the courtroom.

3 The mere failure to stand in the courtroom is not
4 so obstructive or obstreperous that the case cannot go
5 forward. There has to be much stronger evidence than that
6 for the Court to deprive her of her Sixth Amendment right to
7 confront her accusers.

8 THE COURT: Unfortunately you're wrong on the law
9 dealing with the First Amendment rights and you're wrong on
10 dealing with the -- whether or not her behavior is
11 disruptive to this court.

12 Certainly the Court has researched this. You had
13 an opportunity. I filed my order last week. I did not
14 receive anything over the weekend. I received memorandums
15 dealing with issues at 3:00 in the morning.

16 And this is an issue dealing with her
17 interpretation of the Quran, which I duly respect, but
18 understand that there are certain things that override that
19 and that she is in court and the dignity of the judicial
20 system calls upon and has been the law of this country that
21 individuals stand at the appropriate times. That is all the
22 Court is asking. No one is asking her to give up her
23 religion.

24 It should be noted that any other individual in
25 the courtroom that does not stand, whether or not they're a

1 sovereign or Posse Comitatus, would not be allowed to be in
2 the courtroom. They would be warned. If they did not want
3 to stand based on their religion or their view of whether or
4 not the government is legitimate, they would be removed from
5 the courtroom.

6 So she will not be deprived of her right to
7 confront her accusers because, Mr. Scott, you will be
8 present and you are the most able advocate that I know and
9 you have tried a number of cases before the Court and you
10 were the Chief Federal Defender for, what, close to 30 years
11 and there's no one that can come close to your advocacy
12 skills.

13 So she will have clear access to what is going on.
14 You will have as much time to consult with her when you need
15 to consult with her. It just means that trial will take
16 longer. The Court is willing to do that.

17 But as we've had in the past in this district
18 dealing with individuals that do not wish to abide by the
19 court's authority, they have been removed. And we have
20 monitors and the translator will be there to be able to let
21 her know what's going on and whenever you need to talk to
22 her, we will take the necessary breaks to do that.

23 I don't want to take those steps, but it is the
24 Court's position that this is something that is totally
25 disruptive to the whole court system and I will not allow it

1 to occur.

2 Anything for the Government?

3 MR. PAULSEN: Your Honor, I just --

4 THE COURT: Turn on your microphone.

5 MR. PAULSEN: I'm sorry. I just wanted you to
6 know that we did some research over the break too and a law
7 clerk brought up some cases. If you would like to look at
8 them, fine. I think the leading case is United States vs.
9 Ward, 598 F.3d 1054. It kind of sets forth the standard for
10 excluding someone from the court. And as the Court has
11 said, it does have to be something that is so disorderly
12 that it impairs the functioning of the court. Your decision
13 on whether to exclude her is reviewed for abuse of
14 discretion. There are cases here that have gone both ways.

15 THE COURT: They're all over the board.

16 MR. PAULSEN: So I just offer the cases to the
17 Court. And if you need more research, we're happy to do it
18 over lunch or whatever.

19 THE COURT: Both sides can do the research. In no
20 way do I want to exclude her, but understand she does not
21 have a First Amendment right not to stand. That's clear and
22 I'm sure the Government has found that. And there's no case
23 that the Defense has submitted to the Court.

24 And so we have this position of the defendant that
25 she does not want to follow and so it is her decision. I

1 think I have explained it to her clearly. If not, I'll do
2 it again. It's her choice and her choice only.

3 The record should reflect the co-defendant stood,
4 all the individuals in the galley stood. It is -- I have
5 been handling these cases for a long period of time. There
6 has never been any issue dealing with the Court's power to
7 control the decorum of its courtroom by any member of the
8 gallery or any defendant.

9 And so I want the defendant to be present during
10 the course of her trial and -- but understand it's not me.
11 It is the court procedures and the dignity of the court that
12 she has to follow.

13 MR. SCOTT: Don't talk.

14 INTERPRETER: Your Honor, I was just translating
15 what Mr. Scott was saying to his client.

16 THE COURT: All right. Anything further for the
17 Defense, Mr. Scott?

18 MR. SCOTT: Your Honor, I think we've made our
19 objections clear.

20 THE COURT: Anything further for the Government?

21 MR. PAULSEN: I'd just urge the Court to give her
22 chances to purge what she's done. So at every opportunity,
23 maybe each day --

24 THE COURT: Oh, most definitely.

25 MR. PAULSEN: -- be given the chance to

1 reconsider.

2 THE COURT: Of course. Of course. I think it
3 hasn't sunk in yet and I will give her as much leeway as
4 possible to think over the situation. During the jury
5 selection she will be present and so -- but understand
6 tomorrow we'll go through this whole process again and she
7 should know that at some point that I will remove her from
8 the courtroom if she does not follow the rules of decorum.

9 * * *

10 (Excerpt from trial)

11 * * *

12 (12:40 p.m.)

13 IN OPEN COURT

14 (JURY NOT PRESENT)

15 THE COURT: Mr. Scott and Ms. Ali, come forward.
16 The record should reflect -- and, Counsel, you can correct
17 me if I'm wrong -- Ms. Ali did not rise when the jury came
18 in, did not rise when court was adjourned, but did rise when
19 she was introduced to the jury. Would that be accurate?

20 MR. SCOTT: Yes.

21 THE COURT: All right. Ms. Ali, do you understand
22 the Court has made an order that the court's decorum
23 includes all parties to rise when the jury comes in, the
24 potential jurors, when court is in session, and when court
25 is adjourned; do you understand that?

1 DEFENDANT ALI: Okay. I am willing to do anything
2 else, but this is not to disrespect anyone. This is not to
3 follow the court rules. It's just a matter of faith for me
4 to not stand for anyone. I am willing to do anything and
5 everything other than not to compromise my faith and I am
6 willing to do everything else except to stand up for anyone.

7 As far as the other people who have the same faith
8 as me, if they stand up for the jury or for anyone else,
9 that's their rights. When I am before God, God will charge
10 me individually and they will be charged individually. So,
11 you know, if they stand for the jury or anyone else, that's
12 their rights, but I am worried about my salvation here.

13 THE COURT: And do you understand that it's not
14 this Court, but it's the law of the country that you do not
15 have First Amendment rights dealing with the decorum of the
16 court?

17 DEFENDANT ALI: Okay. I was told that there's
18 freedom of religion in this country. I don't think I should
19 be punished or in any way inconvenienced when all I am doing
20 is just practicing my religion and I think I should have the
21 right to do so. You know, I'm saying this before the Court
22 today, that all I'm doing is just follow my religion as I
23 understand.

24 THE COURT: All right. Do you understand the
25 Court has required you to follow the order -- the Court's

1 order dealing with the decorum of court?

2 DEFENDANT ALI: What are the requirements?

3 THE COURT: That you stand when court is called
4 into session and stand when court is adjourned and all other
5 rules of decorum that come into play in the administration
6 of justice in a courtroom.

7 DEFENDANT ALI: Okay. If I have said that I am
8 doing this because of --

9 THE COURT: Excuse me, ma'am. Do you understand
10 that the Court has ordered that to be done?

11 DEFENDANT ALI: Okay. I do understand that, but
12 you are the judge and --

13 THE COURT: The question is whether or not you
14 understand the order.

15 DEFENDANT ALI: I do understand, but I --

16 THE COURT: No. Do you understand? "Yes" or
17 "no."

18 DEFENDANT ALI: Okay. I do understand. But could
19 you wait until I finish?

20 THE COURT: No. Now, the next question I have for
21 you: Do you understand that until you are willing to comply
22 with the Court's order, each time that you do not stand for
23 the jury and for the court either opening of session or
24 closing of session you will be in contempt of court? "Yes"
25 or "no."

1 DEFENDANT ALI: I am not in contempt of court, I
2 never intended to do so, and I do not want to violate my
3 religious beliefs.

4 THE COURT: All right. The Court finds you in
5 contempt of court every time that you do not stand up during
6 the opening of session and closing of session. And also
7 because of your behavior your release is revoked and you
8 will be in custody during the course of this trial.

9 Mr. Scott, anything further?

10 MR. SCOTT: Again we note our objection, Your
11 Honor, to both the order revoking her release and the order
12 holding her in contempt.

13 THE COURT: All right. Anything for the
14 Government?

15 MR. PAULSEN: No, Your Honor.

16 THE COURT: We will recess.

17 * * *

18 **(Excerpt from trial)**

19 * * *

20 (3:20 p.m.)

21 **IN OPEN COURT**

22 **(JURY NOT PRESENT)**

23 THE COURT: All right. Mr. Scott, would you bring
24 your client to the podium.

25 MR. SCOTT: Yes.

1 THE COURT: All right. The record should reflect
2 that the Defendant Ali did not rise for the jury at the
3 beginning of the court proceeding this afternoon and did not
4 rise for the recess this afternoon.

5 The Court has gone over with her the court order
6 of September 30th regarding all parties to this proceeding
7 to rise when court is called to order. She has not complied
8 with that. The Court finds her in contempt two more times
9 and we'll deal with the contempt citations after we finish
10 up this afternoon.

11 Let's take our recess.

12 (Recess taken at 3:25 p.m.)

13 * * * * *

14 (3:50 p.m.)

15 **IN OPEN COURT**

16 **(JURY PRESENT)**

17 MR. SCOTT: Your Honor, could we have a sidebar?

18 THE COURT: Yes, you may.

19 **(At sidebar.)**

20 MR. SCOTT: I would like to seek the Court's
21 assistance with the marshal, Your Honor. At the end of the
22 day there are a few people who are learned in Islam religion
23 that have been brought here by my client's husband who would
24 like to talk to her about the correctness or incorrectness
25 of her beliefs --

1 THE COURT: Sure.

2 MR. SCOTT: -- at the end of the day.

3 THE COURT: Of course.

4 MR. SCOTT: It looks like we are going to run on
5 until 5:00. So if you don't intervene, they will take her
6 out and we won't be able to see her.

7 THE COURT: No, no. Rest assured you know I don't
8 want to do this and it's just foolishness, especially when
9 everybody else is standing and she stood for the jury.

10 So if we can rectify the situation so we can move
11 on with this trial and try it on the merits instead of
12 having this issue be the focal point for the Government and
13 also for the Defense, I'm all for any kind of communication
14 with learned imams to talk to her about her beliefs.

15 MR. SCOTT: Thank you, Your Honor.

16 THE COURT: It's way too important. It's way too
17 important that we not have side issues like this. Let's get
18 the issues -- you have defenses and you are going to raise
19 them and let's not get side issues that will poison the
20 whole well. That's what I am trying to do. All right?

21 And so why don't we do this. We will go to 4:30
22 and she's staying in custody, but --

23 MR. SCOTT: That part I wasn't talking about.

24 THE COURT: They can come up and talk to her at
25 counsel table.

1 MR. SCOTT: I thought if you intervene we can put
2 her in the -- there's one wide room for interviews down in
3 the --

4 THE COURT: Oh, okay. Sure.

5 MR. SCOTT: It seats about three or four that is
6 down in the marshal's lockup. That's not a big issue.

7 **(In open court.)**

8 THE CLERK: Marshal?

9 THE COURT: Sharon?

10 THE CLERK: No, the marshal.

11 **(At sidebar.)**

12 THE COURT: Good afternoon.

13 MARSHAL LUBINSKI: Hi, Judge.

14 THE COURT: Mr. Scott -- I am assuming that the
15 Government doesn't have any objection, but Mr. Scott has
16 come up with an excellent proposal to try to get past this
17 issue. I believe, what, two --

18 MR. SCOTT: I think it will probably be three.
19 There were three that I talked to, Your Honor.

20 THE COURT: Three learned scholars in Islam are
21 here and are willing to talk to her to tell her or not tell
22 her, but to talk through the issue dealing with whether or
23 not her beliefs are correct and hopefully we can resolve
24 this issue and so we can move on without it poisoning the
25 trial.

1 And so Mr. Scott has proposed to the Court, and I
2 would agree and I hope you would agree, that the three
3 individuals will be able to meet with her down in the
4 holding --

5 MR. SCOTT: Interview room, the bigger of the
6 three rooms.

7 THE COURT: She's staying in custody. She has
8 lost her right to be on the street, but at least talk to her
9 about every time I have to make a contempt ruling. So if we
10 can get past this point, it would be great.

11 MARSHAL LUBINSKI: Sure.

12 THE COURT: What we will do is we will break at
13 4:30 and then she'll be able to go down there and talk.

14 MR. SCOTT: Good. Thank you for -- because I know
15 normally you would want to --

16 MARSHAL LUBINSKI: I will make sure they've got
17 deputy marshals around to accommodate that. About 4:30?

18 THE COURT: Does the Government know the names of
19 these individuals so --

20 MR. SCOTT: I don't even know the names.

21 MARSHAL LUBINSKI: It would help to know.

22 THE COURT: Let's get the names so the Government
23 can do their check and so I don't end up having the wrong
24 people --

25 MR. SCOTT: There is going to be two inches of

1 glass between them.

2 THE COURT: Oh, okay.

3 MR. SCOTT: This is the -- they will talk through
4 a little microphone. This is where the attorneys visit
5 their clients.

6 THE COURT: Still turn over the names to --

7 MR. SCOTT: Sure.

8 MARSHAL LUBINSKI: If you would give them to me.

9 MR. SCOTT: Um-hmm.

10 MARSHAL LUBINSKI: Thank you.

11 THE COURT: Thank you.

12 * * *

13 (Excerpt from trial)

14 * * *

15 (4:40 p.m.)

16 IN OPEN COURT

17 (JURY NOT PRESENT)

18 THE COURT: Mr. Scott, will you have your client
19 come forward.

20 Ms. Ali, again you did not stand at the beginning
21 of court after the recess and again you did not stand at the
22 end of court today. You have received the Court's order.
23 The Court has gone over that order with you. You have
24 failed to comply with that order.

25 The Court finds that you are in contempt two more

1 times today. The Court will sentence you to five days on
2 each contempt and they will be consecutive. And, of course,
3 I have already revoked your release and you will be in
4 custody until the end of this trial.

5 Now, I will allow you to meet with some learned
6 imams so you can discuss your interpretation of the Quran
7 and certainly that gives -- if things become enlightened,
8 Mr. Scott, you can always bring a motion to purge if she
9 complies with the Court's order.

10 MR. SCOTT: Yes, Your Honor.

11 * * *

12 **(Excerpts from trial concluded)**

13 * * *

14
15
16 I, Lori A. Simpson, certify that the foregoing is a
17 correct transcript from the record of proceedings in the
18 above-entitled matter.

19
20 Certified by: s/ Lori A. Simpson

21 Lori A. Simpson, RMR-CRR
22
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25